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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,405	12/17/1999	FARRELL L. OSTLER	PHA23.891	1131

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EXAMINER
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MEONSKA, TONIA L

ART UNIT	PAPER NUMBER
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2183

DATE MAILED: 04/02/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/466,405

Applicant(s)

OSTLER ET AL.

Examiner

Tonia L Meonske

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 23, 25, 26, and 29 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Natarjan et al, US Patent 5,857,104.
3. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, paper number 10, mailed on October 22, 2003.

### *Response to Arguments*

4. Applicant's arguments filed January 21, 2004 have been fully considered but they are not persuasive.
5. On pages 8 and 9, Applicant argues in essence:

*"The citation of "abstract, column 5, lines 9-62" is not specific enough for Applicant to ascertain exactly which element is present in the reference. Consequently, a case for anticipation under 102 has not been made."*

However, examiner did not solely cite "abstract, column 5, lines 9-62" anywhere in the last office action, paper number 10, mailed out on October 22, 2003. It is unclear as to what limitation Applicant is requesting clarification. Therefore, Examiner is unable to address this argument. Therefore this argument is moot.

6. On pages 9 and 10, Applicant argues in essence:

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*"Natarjan 'pertains to...'".*

*In contrast, Applicants' claimed invention addresses a need to "...".*

However, according to MPEP 714.02

*"The claims may be amended by canceling particular claims, by presenting new claims, or by rewriting particular claims as indicated in 37 CFR 1.121(c). The requirements of 37 CFR 1.111(b) must be complied with by pointing out the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments."*

Applicant has failed to point out the specific distinctions believed to render the claims patentable over the references. Therefore the response is not fully responsive.

Furthermore, according to MPEP 714.04

*"An amendment failing to point out the patentable novelty which the applicant believes the claims present in view of the state of the art disclosed by the references cited or the objections made may be held to be not fully responsive and a time period set to furnish a proper reply if the statutory period has expired or almost expired (MPEP § 714.03). However, if the claims as amended are clearly open to rejection on grounds of record, a final rejection should generally be made."*

In this case, the claims are clearly open to rejection on grounds of record. Therefore, a final rejection is made.

#### ***Allowable Subject Matter***

7. Claims 13, 15, 19, 24, 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if 112 objections to the claim are corrected and the claims are rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L Meonske whose telephone number is (703) 305-3993.


The examiner can normally be reached on Monday-Friday, 8-4:30.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie P Chan can be reached on (703) 305-9712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm



RICHARD L. ELLIS  
PRIMARY EXAMINER